

Introduced by Senator Cedillo

February 16, 2006

An act to amend Sections 65583 and 65583.2 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as introduced, Cedillo. Housing: use by right.

(1) The Planning and Zoning Law requires the housing element of the general plan of a city or county to include, among other things, a program with a 5-year schedule of actions that the local government is undertaking or intends to undertake to implement the goals and objectives of the housing element. The program is also required to provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including the development of farmworker housing for low- and very low income households.

This bill would in addition add emergency shelter and residential service providers to these provisions, as specified. By increasing the duties of local public officials, the bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Homelessness is a statewide problem that affects many
4 cities and counties. There are an estimated 360,000 homeless
5 individuals and families in California. In some counties, like Los
6 Angeles, an estimated 254,000 men, women, and children
7 experience homelessness over the course of each year. Some of
8 the causes of homelessness are mental illness, substance abuse,
9 prison release, and lack of affordable housing.

10 (b) Because homelessness affects people of all races, gender,
11 age, and geographic location there is a growing need for every
12 city and county to plan for the location of adequate emergency
13 shelters and residential service providers. Many people
14 experiencing homelessness, primarily youth and single
15 individuals, need shelter but also have a need for residential
16 substance abuse and mental health services.

17 (c) Substance abuse is higher among unaccompanied homeless
18 youth and single individuals. In some areas, like Los Angeles
19 County, substance abuse by single homeless individuals ranges
20 from one-third to two-thirds of the population. The incidence of
21 mental illness is higher among chronically homeless individuals
22 than families. The dual diagnosis rate of substance abuse and
23 mental illness is at 16 percent among homeless individuals.

24 (d) The lack or shortage of emergency shelter and residential
25 service providers for homeless individuals and families in cities
26 and counties across the state leads to the concentration of
27 services in inner cities and poor communities, like Skid Row area
28 in downtown Los Angeles.

29 (e) In order to ensure access to services in every city and
30 county for homeless individuals and families, it is important that
31 cities and counties plan for these services to address the special
32 needs and circumstances of this threatened population.

33 (f) It is the responsibility of cities and counties to plan and
34 identify sites to locate residential service providers. Cities and
35 counties should include this as part of their planning process and
36 locate these services where most appropriate in their community.
37 The state should not dictate where these residential service
38 providers should be located.

1 (g) It is the responsibility of the Legislature to promote strong
2 communities and ensure that housing and residential services are
3 available in all communities.

4 SEC. 2. Section 65583 of the Government Code is amended
5 to read:

6 65583. The housing element shall consist of an identification
7 and analysis of existing and projected housing needs and a
8 statement of goals, policies, quantified objectives, financial
9 resources, and scheduled programs for the preservation,
10 improvement, and development of housing. The housing element
11 shall identify adequate sites for housing, including rental
12 housing, factory-built housing, and mobilehomes, and shall make
13 adequate provision for the existing and projected needs of all
14 economic segments of the community. The element shall contain
15 all of the following:

16 (a) An assessment of housing needs and an inventory of
17 resources and constraints relevant to the meeting of these needs.
18 The assessment and inventory shall include all of the following:

19 (1) An analysis of population and employment trends and
20 documentation of projections and a quantification of the
21 locality's existing and projected housing needs for all income
22 levels. These existing and projected needs shall include the
23 locality's share of the regional housing need in accordance with
24 Section 65584.

25 (2) An analysis and documentation of household
26 characteristics, including level of payment compared to ability to
27 pay, housing characteristics, including overcrowding, and
28 housing stock condition.

29 (3) An inventory of land suitable for residential development,
30 including vacant sites and sites having potential for
31 redevelopment, and an analysis of the relationship of zoning and
32 public facilities and services to these sites.

33 (4) An analysis of potential and actual governmental
34 constraints upon the maintenance, improvement, or development
35 of housing for all income levels and for persons with disabilities
36 as identified in the analysis pursuant to paragraph (6), including
37 land use controls, building codes and their enforcement, site
38 improvements, fees and other exactions required of developers,
39 and local processing and permit procedures. The analysis shall
40 also demonstrate local efforts to remove governmental

1 constraints that hinder the locality from meeting its share of the
2 regional housing need in accordance with Section 65584 and
3 from meeting the need for housing for persons with disabilities
4 identified pursuant to paragraph (6).

5 (5) An analysis of potential and actual nongovernmental
6 constraints upon the maintenance, improvement, or development
7 of housing for all income levels, including the availability of
8 financing, the price of land, and the cost of construction.

9 (6) An analysis of any special housing needs, such as those of
10 the elderly, persons with disabilities, large families, farmworkers,
11 families with female heads of households, ~~and families and~~
12 persons in need of emergency shelter, *and persons in need of*
13 *residential mental health and drug rehabilitation services or*
14 *other residential services.*

15 (7) An analysis of opportunities for energy conservation with
16 respect to residential development.

17 (8) An analysis of existing assisted housing developments that
18 are eligible to change from low-income housing uses during the
19 next 10 years due to termination of subsidy contracts, mortgage
20 prepayment, or expiration of restrictions on use. “Assisted
21 housing developments,” for the purpose of this section, shall
22 mean multifamily rental housing that receives governmental
23 assistance under federal programs listed in subdivision (a) of
24 Section 65863.10, state and local multifamily revenue bond
25 programs, local redevelopment programs, the federal Community
26 Development Block Grant Program, or local in-lieu fees.
27 “Assisted housing developments” shall also include multifamily
28 rental units that were developed pursuant to a local inclusionary
29 housing program or used to qualify for a density bonus pursuant
30 to Section 65916.

31 (A) The analysis shall include a listing of each development
32 by project name and address, the type of governmental assistance
33 received, the earliest possible date of change from low-income
34 use and the total number of elderly and nonelderly units that
35 could be lost from the locality’s low-income housing stock in
36 each year during the 10-year period. For purposes of state and
37 federally funded projects, the analysis required by this
38 subparagraph need only contain information available on a
39 statewide basis.

1 (B) The analysis shall estimate the total cost of producing new
2 rental housing that is comparable in size and rent levels, to
3 replace the units that could change from low-income use, and an
4 estimated cost of preserving the assisted housing developments.
5 This cost analysis for replacement housing may be done
6 aggregately for each five-year period and does not have to
7 contain a project-by-project cost estimate.

8 (C) The analysis shall identify public and private nonprofit
9 corporations known to the local government which have legal
10 and managerial capacity to acquire and manage these housing
11 developments.

12 (D) The analysis shall identify and consider the use of all
13 federal, state, and local financing and subsidy programs which
14 can be used to preserve, for lower income households, the
15 assisted housing developments, identified in this paragraph,
16 including, but not limited to, federal Community Development
17 Block Grant Program funds, tax increment funds received by a
18 redevelopment agency of the community, and administrative fees
19 received by a housing authority operating within the community.
20 In considering the use of these financing and subsidy programs,
21 the analysis shall identify the amounts of funds under each
22 available program which have not been legally obligated for
23 other purposes and which could be available for use in preserving
24 assisted housing developments.

25 (b) (1) A statement of the community's goals, quantified
26 objectives, and policies relative to the maintenance, preservation,
27 improvement, and development of housing.

28 (2) It is recognized that the total housing needs identified
29 pursuant to subdivision (a) may exceed available resources and
30 the community's ability to satisfy this need within the content of
31 the general plan requirements outlined in Article 5 (commencing
32 with Section 65300). Under these circumstances, the quantified
33 objectives need not be identical to the total housing needs. The
34 quantified objectives shall establish the maximum number of
35 housing units by income category that can be constructed,
36 rehabilitated, and conserved over a five-year time period.

37 (c) A program which sets forth a five-year schedule of actions
38 the local government is undertaking or intends to undertake to
39 implement the policies and achieve the goals and objectives of
40 the housing element through the administration of land use and

1 development controls, provision of regulatory concessions and
2 incentives, and the utilization of appropriate federal and state
3 financing and subsidy programs when available and the
4 utilization of moneys in a low- and moderate-income housing
5 fund of an agency if the locality has established a redevelopment
6 project area pursuant to the Community Redevelopment Law
7 (Division 24 (commencing with Section 33000) of the Health and
8 Safety Code). In order to make adequate provision for the
9 housing needs of all economic segments of the community, the
10 program shall do all of the following:

11 (1) Identify actions that will be taken to make sites available
12 during the planning period of the general plan with appropriate
13 zoning and development standards and with services and
14 facilities to accommodate that portion of the city's or county's
15 share of the regional housing need for each income level that
16 could not be accommodated on sites identified in the inventory
17 completed pursuant to paragraph (3) of subdivision (a) without
18 rezoning, and to comply with the requirements of Section
19 65584.09. Sites shall be identified as needed to facilitate and
20 encourage the development of a variety of types of housing for
21 all income levels, including multifamily rental housing,
22 factory-built housing, mobilehomes, housing for agricultural
23 employees, emergency shelters, *residential service providers*,
24 and transitional housing.

25 (A) Where the inventory of sites, pursuant to paragraph (3) of
26 subdivision (a), does not identify adequate sites to accommodate
27 the need for groups of all household income levels pursuant to
28 Section 65584, the program shall identify sites that can be
29 developed for housing within the planning period pursuant to
30 subdivision (h) of Section 65583.2.

31 (B) Where the inventory of sites pursuant to paragraph (3) of
32 subdivision (a) does not identify adequate sites to accommodate
33 the need for farmworker housing, the program shall provide for
34 sufficient sites to meet the need with zoning that permits
35 farmworker housing use by right, including density and
36 development standards that could accommodate and facilitate the
37 feasibility of the development of farmworker housing for low-
38 and very low income households.

39 (C) *Where the inventory of sites pursuant to paragraph (3) of*
40 *subdivision (a) does not identify adequate sites to accommodate*

1 *the need to shelter families and persons in need of emergency*
2 *shelters and residential service providers identified pursuant to*
3 *paragraph (6) of subdivision (a), the program shall identify*
4 *sufficient sites that can be developed within the planning period*
5 *pursuant to paragraph (1) of this subdivision to meet the need*
6 *with zoning that permits emergency shelters and residential*
7 *service providers use by right.*

8 (2) Assist in the development of adequate housing to meet the
9 needs of low- and moderate-income households.

10 (3) Address and, where appropriate and legally possible,
11 remove governmental constraints to the maintenance,
12 improvement, and development of housing, including housing for
13 all income levels and housing for persons with disabilities. The
14 program shall remove constraints to, or provide reasonable
15 accommodations for housing designed for, intended for
16 occupancy by, or with supportive services for, persons with
17 disabilities.

18 (4) Conserve and improve the condition of the existing
19 affordable housing stock, which may include addressing ways to
20 mitigate the loss of dwelling units demolished by public or
21 private action.

22 (5) Promote housing opportunities for all persons regardless of
23 race, religion, sex, marital status, ancestry, national origin, color,
24 familial status, or disability.

25 (6) (A) Preserve for lower income households the assisted
26 housing developments identified pursuant to paragraph (8) of
27 subdivision (a). The program for preservation of the assisted
28 housing developments shall utilize, to the extent necessary, all
29 available federal, state, and local financing and subsidy programs
30 identified in paragraph (8) of subdivision (a), except where a
31 community has other urgent needs for which alternative funding
32 sources are not available. The program may include strategies
33 that involve local regulation and technical assistance.

34 (B) The program shall include an identification of the agencies
35 and officials responsible for the implementation of the various
36 actions and the means by which consistency will be achieved
37 with other general plan elements and community goals. The local
38 government shall make a diligent effort to achieve public
39 participation of all economic segments of the community in the

1 development of the housing element, and the program shall
2 describe this effort.

3 (d) The analysis and program for preserving assisted housing
4 developments required by the amendments to this section enacted
5 by the Statutes of 1989 shall be adopted as an amendment to the
6 housing element by July 1, 1992.

7 (e) Failure of the department to review and report its findings
8 pursuant to Section 65585 to the local government between July
9 1, 1992, and the next periodic review and revision required by
10 Section 65588, concerning the housing element amendment
11 required by the amendments to this section by the Statutes of
12 1989, shall not be used as a basis for allocation or denial of any
13 housing assistance administered pursuant to Part 2 (commencing
14 with Section 50400) of Division 31 of the Health and Safety
15 Code.

16 SEC. 3. Section 65583.2 of the Government Code is amended
17 to read:

18 65583.2. (a) A city's or county's inventory of land suitable
19 for residential development pursuant to paragraph (3) of
20 subdivision (a) of Section 65583 shall be used to identify sites
21 that can be developed for housing within the planning period and
22 that are sufficient to provide for the jurisdiction's share of the
23 regional housing need for all income levels pursuant to Section
24 65584. As used in this section, "land suitable for residential
25 development" includes all of the following:

26 (1) Vacant sites zoned for residential use.

27 (2) Vacant sites zoned for nonresidential use that allows
28 residential development.

29 (3) Residentially zoned sites that are capable of being
30 developed at a higher density.

31 (4) Sites zoned for nonresidential use that can be redeveloped
32 for, and as necessary, rezoned for, residential use.

33 (b) The inventory of land shall include all of the following:

34 (1) A listing of properties by parcel number or other unique
35 reference.

36 (2) The size of each property listed pursuant to paragraph (1),
37 and the general plan designation and zoning of each property.

38 (3) For nonvacant sites, a description of the existing use of
39 each property.

1 (4) A general description of any environmental constraints to
2 the development of housing within the jurisdiction, the
3 documentation for which has been made available to the
4 jurisdiction. This information need not be identified on a
5 site-specific basis.

6 (5) A general description of existing or planned water, sewer,
7 and other dry utilities supply, including the availability and
8 access to distribution facilities. This information need not be
9 identified on a site-specific basis.

10 (6) Sites identified as available for housing for
11 above-moderate income households in areas not served by public
12 sewer systems. This information need not be identified on a
13 site-specific basis.

14 (7) A map that shows the location of the sites included in the
15 inventory, such as the land use map from the jurisdiction's
16 general plan for reference purposes only.

17 (c) Based on the information provided in subdivision (b), a
18 city or county shall determine whether each site in the inventory
19 can accommodate some portion of its share of the regional
20 housing need by income level during the planning period, as
21 determined pursuant to Section 65584. The analysis shall
22 determine whether the inventory can provide for a variety of
23 types of housing, including multifamily rental housing,
24 factory-built housing, mobilehomes, housing for agricultural
25 employees, emergency shelters, *residential service providers*,
26 and transitional housing. The city or county shall determine the
27 number of housing units that can be accommodated on each site
28 as follows:

29 (1) If local law or regulations require the development of a site
30 at a minimum density, the department shall accept the planning
31 agency's calculation of the total housing unit capacity on that site
32 based on the established minimum density. If the city or county
33 does not adopt a law or regulations requiring the development of
34 a site at a minimum density, then it shall demonstrate how the
35 number of units determined for that site pursuant to this
36 subdivision will be accommodated.

37 (2) The number of units calculated pursuant to paragraph (1)
38 shall be adjusted as necessary, based on the land use controls and
39 site improvements requirement identified in paragraph (4) of
40 subdivision (a) of Section 65583.

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas: sites allowing at least 15 units per acre.

(ii) For unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.

(iii) For suburban jurisdictions: sites allowing at least 20 units per acre.

(iv) For jurisdictions in metropolitan counties: sites allowing at least 30 units per acre.

(d) For purposes of this section, metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau. Nonmetropolitan counties with micropolitan areas include the following counties: Del Norte, Humboldt, Lake Mendocino, Nevada, Tehama, and Tuolumne and such other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) A jurisdiction is considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it is considered metropolitan. Counties, not including the City and County of San Francisco, will be considered suburban unless they are in a MSA of 2,000,000 or greater in population in which case they are considered metropolitan.

1 (f) A jurisdiction is considered metropolitan if the jurisdiction
2 does not meet the requirements for “suburban area” above and is
3 located in a MSA of 2,000,000 or greater in population, unless
4 that jurisdiction’s population is less than 25,000 in which case it
5 is considered suburban.

6 (g) For sites described in paragraph (3) of subdivision (b) the
7 city or county shall specify the additional development potential
8 for each site within the planning period and shall provide an
9 explanation of the methodology used to determine the
10 development potential. The methodology shall consider factors
11 including the extent to which existing uses may constitute an
12 impediment to additional residential development, development
13 trends, market conditions, and regulatory or other incentives or
14 standards to encourage additional residential development on
15 these sites.

16 (h) The program required by subparagraph (A) of paragraph
17 (1) of subdivision (c) of Section 65583 shall accommodate 100
18 percent of the need for housing for very low and low-income
19 households allocated pursuant to Section 65584 for which site
20 capacity has not been identified in the inventory of sites pursuant
21 to paragraph (3) of subdivision (a) on sites that shall be zoned to
22 permit owner-occupied and rental multifamily residential use by
23 right during the planning period. These sites shall be zoned with
24 minimum density and development standards that permit at least
25 16 units per site at a density of at least 16 units per acre in
26 jurisdictions described in clause (i) of subparagraph (B) of
27 paragraph (3) of subdivision (c) and at least 20 units per acre in
28 jurisdictions described in clauses (iii) and (iv) of subparagraph
29 (B) of paragraph (3) of subdivision (c). At least 50 percent of the
30 very low and low-income housing need shall be accommodated
31 on sites designated for residential use and for which
32 nonresidential uses or mixed-uses are not permitted.

33 (i) For purposes of this section and Section 65583, the phrase
34 “use by right” shall mean that the local government’s review of
35 the owner-occupied, *farmworker housing*, *emergency shelter*,
36 *residential service provider*, or *rental* multifamily residential use
37 may not require a conditional use permit, planned unit
38 development permit, or other discretionary local government
39 review or approval that would constitute a “project” for purposes
40 of Division 13 (commencing with Section 21100) of the Public

1 Resources Code. Any subdivision of the sites shall be subject to
2 all laws, including, but not limited to, the local government
3 ordinance implementing the Subdivision Map Act. A local
4 ordinance may provide that “use by right” does not exempt the
5 use from design review. However, that design review shall not
6 constitute a “project” for purposes of Division 13 (commencing
7 with Section 21100) of the Public Resources Code. Use by right
8 for all rental multifamily residential housing shall be provided in
9 accordance with subdivision (f) of Section 65589.5.

10 SEC. 4. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.